Supreme Court, U.S.
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No. 00-1150

In The

Supreme Court of the United States

THERESA L. HERMES,

Petitioner,

v.

STATE OF NEBRASKA, Acting Through the Department of Public Institutions, WESTERN NEBRASKA VETERAN'S HOME,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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OPINION BELOW

The opinion of the Eighth Circuit Court of Appeals at issue is unpublished at Case No. 99-3797NE. The decision of the district court is unreported.

INTRODUCTION

Respondent, the State of Nebraska, submits this Brief in Opposition to the Petition for Writ of Certiorari. The Petition asserts that the Eighth Circuit's decision raises a question for this Court's review in terms of whether Title I of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12111 to 12117, constitutes a proper exercise of Congress' power under Section 5 of the Fourteenth Amendment to abrogate the State's Eleventh Amendment immunity.

ARGUMENT

In the Petitioner's Petition for Writ of Certiorari the Petitioner acknowledges that her Petition for Writ of Certiorari raises the identical issue as the issue presented in *University of Alabama at Birmingham Bd. Of Trustees v. Garrett,* 193 F.3d 1214 (11th Cir. 1999), *cert. granted,* 120 S.Ct 1669 (U.S. Apr. 17, 2000) (No. 99-1240) and requests that her Petition be disposed of in accordance with the decision in that case. (Petition for Writ of Certiorari, p. 4). On February 21, 2001, this Court reversed the Eleventh Circuit Court of Appeals in *University of Alabama at Birmingham Bd. Of Trustees v. Garrett,* Case No. 99-1240, 2001 WL 173556 (Feb. 21, 2001). The Court held that Congress had

not properly abrogated the State's Eleventh Amendment immunity in enacting Title I of the ADA. Accordingly the Court determined that suits against a state by state employees for money damages for the state's failure to comply with the provisions of Title I of the ADA, are barred by the Eleventh Amendment of the United States Constitution. Based upon this being the sole question presented by the Petitioner, the Respondent opposes a grant of certiorari in this case and respectfully requests that the Petition for a Writ of Certiorari be denied.

CONCLUSION

The Respondent respectfully requests that the Petition for Writ of Certiorari be denied based upon this Court's decision in *University of Alabama at Birmingham Bd. Of Trustees v. Garrett*, No. 99-1240, 2001 WL 173556 (February 21, 2001).

Respectfully submitted,

STATE OF NEBRASKA, Acting Through the Department of Public Institutions, WESTERN NEBRASKA VETERAN'S HOME, Respondent,

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